

STATE BOARD OF ACCOUNTS
302 West Washington Street
Room E418
INDIANAPOLIS, INDIANA 46204-2769

SUPPLEMENTAL COMPLIANCE REPORT
OF
FALLING WATERS CONSERVANCY DISTRICT
PORTER COUNTY, INDIANA
January 1, 2012 to December 31, 2016



FILED
06/26/2017

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SCHEDULE OF OFFICIALS

<u>Office</u>	<u>Official</u>	<u>Term</u>
Court-Appointed Receiver	James A. Federoff	01-01-12 to 12-31-12
	(Vacant)	01-01-13 to 01-03-13
	Craig Wrathell	01-04-13 to 01-04-17
Financial Clerk	Karen M. Giesler	01-01-12 to 05-14-14
	(Vacant)	05-15-14 to 01-12-17
	Karen M. Giesler	01-13-17 to 12-31-17
President of the Board	Peter E. Gutierrez, M.D.	01-01-12 to 08-31-12
	Marko Sowa	09-01-12 to 02-23-14
	Peter Kovacik	02-24-14 to 03-14-16
	Michael Berta	03-15-16 to 02-15-18



STATE OF INDIANA
AN EQUAL OPPORTUNITY EMPLOYER

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TO: THE OFFICIALS OF THE FALLING WATERS CONSERVANCY
DISTRICT, PORTER COUNTY, INDIANA

This report is supplemental to our examination report of the Falling Waters Conservancy District (District), for the period from January 1, 2012 to December 31, 2016. It has been provided as a separate report so that the reader may easily identify any Examination Results and Comments that pertain to the District. It should be read in conjunction with our Financial Statements Examination Report of the District, which provides our opinion on the District's financial statements. This report may be found at www.in.gov/sboa.

As authorized under Indiana Code 5-11-1, we performed procedures to determine compliance with applicable Indiana laws and uniform compliance guidelines established by the Indiana State Board of Accounts. The Examination Results and Comments contained herein describe the identified reportable instances of noncompliance found as a result of these procedures. Our tests were not designed to identify all instances of noncompliance; therefore, noncompliance may exist that is unidentified.

Any Official Response to the Results and Comments, incorporated within this report, was not verified for accuracy.

Paul D. Joyce
Paul D. Joyce, CPA
State Examiner

March 28, 2017

FALLING WATERS CONSERVANCY DISTRICT
EXAMINATION RESULTS AND COMMENTS

STATUS OF THE DISTRICT

The District was placed in receivership by a federal bankruptcy court on February 2, 2010, because the District had defaulted on a \$9,990,000 bond issue.

A developer who owned approximately 68 percent of the property (256 lots) within the District filed bankruptcy in 2010, owing the District \$1,593,432 in Exceptional Benefits Taxes (EBT); thus, the District did not have the revenues required to pay the bonds and interest amounts due.

During the examination period, the lots owned by the developer were sold under a bankruptcy sale to a new developer with the closing of the sale on December 29, 2016. Subsequent to the sale, the following occurred:

1. The receivership was terminated.
2. The outstanding bonds of \$9,975,000 were cancelled; effectively eliminating the debt obligation of the District.
3. The District waived the EBT and Special Benefits Taxes owed and accrued totaling \$8,445,749 on the lots sold as part of the sales agreement.
4. The District was able to reduce the EBT from \$2,206 per year to \$200 per year effective January 1, 2017.

RECORDS NOT PRESENTED FOR EXAMINATION

After the District defaulted on the bond and interest payments, the Trustee paid attorney fees and Trustee fees from the Bond and Interest fund and the Debt Service Reserve fund. Invoices supporting the payments totaling \$1,491,875 were not presented for examination; thus, it could not be substantiated that the payments for the attorney's fees and trustee fees related to the District's default on the bond payments and the associated litigation.

Supporting documentation such as receipts, canceled checks, tickets, invoices, bills, contracts, and other public records must be available for examination to provide supporting information for the validity and accountability of monies disbursed. Payments without supporting documentation may be the personal obligation of the responsible official or employee. (Accounting and Uniform Compliance Guidelines Manual for Special Districts, Chapter 1)

CONDITION OF RECORDS

The District maintained handwritten ledgers, but did not maintain totals of receipts and disbursements either by month or for the year.

The receipts and disbursements per the ledgers were not in agreement with the receipts and disbursements reported in the financial statements for 2016. The financial statements for 2016 either over-reported or underreported receipts and disbursements of funds, resulting in inaccurate cash and investment balances as follows:

FALLING WATERS CONSERVANCY DISTRICT
EXAMINATION RESULTS AND COMMENTS
(Continued)

Fund	Receipts	Disbursements	Cash and Investments Balance
Bond and Interest fund per Financial Statements*	\$ 416,918	\$ 518,681	\$ 126,880
Bond and Interest fund per Ledger*	<u>624,201</u>	<u>692,734</u>	<u>93,650</u>
Over (Under) Reported Activity	<u>\$ (207,283)</u>	<u>\$ (174,053)</u>	<u>\$ 33,230</u>
Operating fund per Financial Statements	\$ 475,409	\$ 559,865	\$ 90,257
Operating fund per Ledger	<u>473,749</u>	<u>559,644</u>	<u>88,818</u>
Over (Under) Reported Activity	<u>\$ 1,660</u>	<u>\$ 221</u>	<u>\$ (1,439)</u>
Storm Water Operating fund per Financial Statements	\$ 5,374	\$ 5,475	\$ 18,453
Storm Water Operating fund per Ledger	<u>6,813</u>	<u>5,475</u>	<u>19,892</u>
Over (Under) Reported Activity	<u>\$ (1,439)</u>	<u>\$ -</u>	<u>\$ 1,439</u>

*The Cash and Investment Balance reported above for the Bond and Interest fund is as of January 1, 2016, as the reported balances were changed from the prior year ending reported balance.

Indiana Code 5-13-5-1 states in part:

"(a) Every public officer who receives or distributes public funds shall:

- (1) keep a cashbook into which the public officer shall enter daily, by item, all receipts of public funds; and
- (2) balance the cashbook daily to show funds on hand at the close of each day.

(b) The cashbook is a public record and is open to public inspection in accordance with IC 5-14-3. . . .

RECEIPTS

During the examination period, the District used two-part billing statements to bill for sewage services. One part of the billing statement was retained by the customer, and the second part was returned by the customer with payment. Billing statements returned with customer payments were not marked to indicate the date the payment was received; thus, it could not be substantiated that deposits were made timely.

Duplicate receipts were written for batches of utility collections, which corresponded to the date the collections were deposited. The receipts were not issued, so the original receipt was retained in the receipt book with the duplicate. The original copy was not removed and attached to the batches of customer billing statements supporting that receipt.

Receipt numbers were not recorded in the ledgers, and receipts issued from 2014 through 2016 were posted in batches by date.

FALLING WATERS CONSERVANCY DISTRICT
EXAMINATION RESULTS AND COMMENTS
(Continued)

Indiana Code 5-13-6-1(c) states:

"Except as provided in subsections (d) and (g), all local officers, except township trustees, who collect public funds of their respective political subdivisions, shall deposit funds not later than the business day following the receipt of funds on business days of the depository in the depository or depositories selected by the several local boards of finance that have jurisdiction of the funds. The public funds collected by township trustees shall be deposited in the designated depository on or before the first and fifteenth day of each month. Public funds deposited under this subsection shall be deposited in the same form in which they were received."

Effective July 1, 2015, Indiana Code 5-13-6-1(g) states in part:

"The following are not required to deposit funds on the business day following receipt if the funds on hand do not exceed five hundred dollars (\$500): . . .

- (2) A local officer of a political subdivision required to deposit funds under subsection (c) other than a township trustee. . . .

However, the funds on hand must be deposited not later than the business day following the day that the funds exceed five hundred dollars (\$500)."

Receipts shall be issued and recorded at the time of the transaction. (Accounting and Uniform Compliance Guidelines Manual for Special Districts, Chapter 1)

Indiana Code 5-13-5-1 states in part:

"(a) Every public officer who receives or distributes public funds shall:

- (1) keep a cashbook into which the public officer shall enter daily, by item, all receipts of public funds; and
- (2) balance the cashbook daily to show funds on hand at the close of each day.

(b) The cashbook is a public record and is open to public inspection in accordance with IC 5-14-3. . . .

CAPITAL ASSETS

The District Board had not established a capitalization policy for recording capital assets, nor were records of capital assets maintained.

Every unit must have a capital assets policy that details the threshold at which an item is considered a capital asset. Every unit must have a complete detail listing of all capital assets owned which reflects their acquisition value. Capital Asset Ledger (Form 369) has been prescribed for this purpose. A complete physical inventory must be taken at least every two years, unless more stringent requirements exist, to verify account balances carried in the accounting records. (Accounting and Uniform Compliance Guidelines for Special Districts, Chapter 1)



Blachly, Tabor, Bozik & Hartman, LLC

April 21, 2017

Randall J. Zromkoski
Craig R. Van Schouwen
Jeffrey S. Wrage
Ethan S. Lowe

Paul D. Joyce
State Board of Accounts
302 West Washington Street, Room E418
Indianapolis, IN 46204-2765

Scott R. Bozik
Angelica C. Schultis
Nathan D. Vis
Colby A. Barkes

**RE: Supplemental Compliance Report of Falling Waters
Conservancy District January 1, 2012 to December 31, 2016
Falling Waters Conservancy District Board Response**

OF COUNSEL
Duane W. Hartman
David L. Hollenbeck
Kingsley G. Regnier
Patrick Lyp

Dear Mr. Joyce:

In behalf of the Falling Waters Conservancy District Board, the Board commends the State Board of Accounts for the thorough and professional compliance report leading up to the March 28, 2017 exit conference.

Quentin A. Blachly
(1934 -1997)
James S. Bozik
(1935 - 2012)
Glenn J. Tabor
(Retired)

As an overview, from 2011 until early 2017, the Falling Waters Conservancy District Board was under the control and direction of a court appointed receiver. While under the receivership, the Board acted in an advisory role to the two court appointed receivers, ultimately bringing resolution to the matter in the fall of 2016.

Response to Finding: RECORDS NOT PRESENTED FOR EXAMINATION

The Board is aware the Bond Trustee, US Bank, declined to provide invoices for the monies paid by the Trustee towards attorney fees and trustee fees. Same were remitted from the bond debt service fund following payment of Exceptional Benefits Taxes (EBT) on behalf of the Freeholders. The District Receivers informed the Board they had no power to compel the Bond Trustee to provide the information. The Board made repeated efforts to the Bond Trustee to release same and all efforts were denied. However, all bond debt has been waived rendering this matter moot.

Response to Finding: CONDITION OF RECORDS

The Board appreciates the observations made by the examiner during the examination period and the Board will ensure totals of receipts and disbursements are maintained both by month and by year.

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Blachly, Tabor, Bozik & Hartman, LLC

Paul D. Joyce
April 21, 2017
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Response to Finding: RECEIPTS

The Board does not contest this finding and same will be corrected.

Response to Finding: CAPITAL ASSETS

The District Board was unaware a capital assets schedule needed to be created prior to 2016. At present, the Board is aware of no physical/movable tangible asset that could be moved or utilized for personal use. That being said, a capital asset policy will be prepared and implemented by the Board at their May 2017 meeting.

Sincerely,

On behalf of the Falling Waters Conservancy
District Board Attorney

By:

A handwritten signature in blue ink, appearing to read "Nathan D. Vis", is written over a horizontal line.

Nathan D. Vis
ndv@btblaw.com

NDV:cd

FALLING WATERS CONSERVANCY DISTRICT
EXIT CONFERENCE

The contents of this report were discussed on March 28, 2017, with Nathan Vis, Attorney for the District; Karen M. Giesler, Financial Clerk; and Michael Berta, President of the Board.

The contents of this report were mailed on March 28, 2017, to Craig Wrathell, Court Appointed Receiver.